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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/427,260	10/25/1999	FARHAD KHOSRAVI	239/227	2937

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EXAMINER

PELLEGRINO, BRIAN E

ART UNIT	PAPER NUMBER
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3738

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/26/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 09/427,260	Applicant(s) KHOSRAVI ET AL.	
	Examiner Brian E Pellegrino	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29,30,55-57,59,60 and 62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29,30,55-57,59,60 and 62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/29/06 has been entered.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim 29,30,55-57,59-62 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gray et al. (5895406) in view of Khosravi et al. 5824054. Gray et al. (Fig. 6) show a stent with wing-like shape formed of a pair of longitudinal elements with each having undulations. It can be seen that longitudinal adjacent cells are connected at the tips or looped ends of wing-like elements. Additionally, it can be seen there is a peripheral connector joining each of the stretchable cells. Gray et al. disclose the stent pattern provides good axial flexibility, col. 2, lines 27-34. Gray also discloses the stent can be formed from many different methods, col. 4, line 62. However, Gray does not disclose the stent is formed of a coiled sheet or include locking elements or specifically

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that a shape memory material can be used. Khosravi et al. show a coiled sheet stent 11 having a plurality of locking elements 15 in openings in the stent. Khosravi also teaches that stents can be made of shape memory materials for flexibility, col. 5, lines 55-67.

Khosravi additionally teaches the stent pattern used should accommodate its intended use, col. 3, lines 35-41. It would have been obvious to one of ordinary skill in the art to use a coiled sheet to form the stent and include locking elements as taught by Khosravi et al. in the stent of Gray such that it prevents collapse. Gray does disclose materials known to be of shape memory and that respond as shape memory material does when deployed, col. 5, lines 8-10, 16-19. Thus, it would also have been obvious to one of ordinary skill in the art to use shape memory material as taught by Khosravi with the stent of Gray such that it is more flexible when inserting in tortuous vessels.

Response to Arguments

Applicant's arguments with respect to claims 29, 55, 59 have been considered but are moot in view of the new ground(s) of rejection. It is noted that Applicant had provided some argument regarding a combination of Gray and Khosravi filed 7/1/05 and these comments have been fully considered but they are not persuasive. The rejection was not required to be maintained since the scope of the claims was broader than a rejection using Gray and Khosravi and was able to be rejected on references alone or under U.S.C. 102. The Examiner would like to now comment and provide support for reasons to combine the two references. Applicant had provided comments that Khosravi stents would cause damage because of locking elements and thus cannot be combined

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with Gray's device. However, the Examiner notes that Fig. 1 of Khosravi '054 appears to show no such protrusion or locking elements extending beyond the surface such that it would cause damage to a vessel as alleged in Applicant's arguments. Since the coiled sheet has several turns it provides a large enough opening to accommodate the entire locking element and not cause a protrusion on the exterior surface of the stent device. Additionally, as mentioned above coiled sheets of Khosravi '054 can have any type of pattern as needed (col. 3, lines 39-41) to provide for flexibility in tortuous vessels. Thus the stent has a smooth exterior surface and can be flexible. Thus the Gray and Khosravi '054 can be properly combined.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Pellegrino whose telephone number is 571-272-4756. The examiner can normally be reached on Monday-Friday from 8am to 5:30pm. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TC 3700, AU 3738

Brian Pellegrino
BRIAN E. PELLEGRINO
PRIMARY EXAMINER